

SENATE BILL NO. 298

INTRODUCED BY B. GLASER, FORRESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSON WHO WITHHOLDS RETAINAGE FROM A CONSTRUCTION CONTRACTOR TO DEPOSIT THE RETAINAGE IN AN INTEREST-BEARING ACCOUNT AND TO PAY THE INTEREST ON THE RETAINAGE TO THE CONSTRUCTION CONTRACTOR AT THE TIME THAT THE RETAINAGE IS PAID; LIMITING THE AMOUNT OF RETAINAGE THAT MAY BE WITHHELD TO 5 10 PERCENT OF THE TOTAL AMOUNT TO BE PAID TO A CONSTRUCTION CONTRACTOR EXCEPT FOR A RESIDENTIAL PROJECT WITH A TOTAL COST OF LESS THAN \$200,000; REMOVING THE EXEMPTION IN TITLE 28, CHAPTER 2, PART 21, FOR IMPROVEMENTS TO REAL PROPERTY INTENDED FOR RESIDENTIAL PURPOSES; REPEALING \$400,000; AMENDING SECTION 28-2-2107, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Retainage to be deposited in interest-bearing account -- interest to be paid to construction contractor -- enforcement -- definitions.~~ (1) A person who withholds retainage from a construction contractor shall deposit the retainage into an interest-bearing account. At the time that retainage is paid to the construction contractor, the person shall also pay to the construction contractor the interest on that retainage.

~~(2) The obligation to deposit retainage in an interest-bearing account or to pay interest on the retainage to the construction contractor, or both, pursuant to this section, may be enforced by a civil action in district court in the county in which the construction contractor resides.~~

~~(3) The following definitions apply to [section 2] and this section:~~

~~(a) "Construction contractor" has the meaning provided in 39-9-102.~~

~~(b) "Person" means an individual, sole proprietorship, partnership, corporation, firm, or other private business entity.~~

~~(c) "Retainage" means an amount of money otherwise owed to a construction contractor for construction services, construction materials, or both, that is withheld from payment to the construction contractor.~~

NEW SECTION. Section 1. Limit on retainage. (1) The maximum retainage applied to construction contracts ~~FOR RESIDENTIAL PROJECTS WITH A TOTAL COST OF LESS THAN \$200,000~~ subject to the provisions of this part may not exceed ~~5%~~ 10% if the construction contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

~~(3) THIS SECTION DOES NOT APPLY TO RESIDENTIAL PROJECTS WITH A TOTAL COST OF LESS THAN \$200,000.~~

~~NEW SECTION. SECTION 2. REPEALER. SECTION 28-2-2107, MCA, IS REPEALED.~~

SECTION 2. SECTION 28-2-2107, MCA, IS AMENDED TO READ:

"28-2-2107. Exception for certain residential dwellings. The provisions of this part do not apply to RESIDENTIAL PROJECTS OR improvements to real property intended for residential purposes ~~that consist of four or fewer residential units~~ WITH A TOTAL COST OF LESS THAN \$400,000."

NEW SECTION. **Section 3. Codification instruction.** ~~[Sections 1 and 2]~~ are [SECTION 1] IS intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to ~~[sections 1 and 2]~~ [SECTION 1].

NEW SECTION. **Section 4. Applicability.** [This act] applies to contracts entered into or renewed after October 1, 2001.

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